COLLECTION PROCEDURES FOR EXCISE TAXES ON GASOLINE, DIESEL, AND NONGASOLINE AVIATION FUELS (S. 2075, S. 2003, S. 2062, S. 2067, S. 2118, AND S. 2128)

Scheduled for a Hearing

Before the

SUBCOMMITTEE ON ENERGY AND AGRICULTURAL TAXATION

of the

SENATE COMMITTEE ON FINANCE

on March 16, 1988

Prepared by the Staff

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CONTENTS

	Page
INTRODUCTION	1
I. SUMMARY	2
II. PRESENT LAW AND PROPOSALS RELATING TO COLLECTION OF EXCISE TAXES ON GASOLINE, DIESEL, AND NONGASOLINE AVIATION FUELS	3
A. Present Law	3
1. Gasoline excise tax	3
2. Diesel and nongasoline aviation fuels excise taxes	5
B. Description of Bills	7
1. S. 2075	7
2. S. 2003	7
3. S. 2062	7
4. S. 2067	8
5. S. 2118	9
6. S. 2128	9

INTRODUCTION

The Subcommittee on Energy and Agricultural Taxation of the Senate Committee on Finance has scheduled a public hearing on March 16, 1988, on collection procedures and exemptions for excise taxes on gasoline, diesel, and nongasoline aviation fuels. This document,[1] prepared by the Staff of the Joint Committee on Taxation, provides a description of present law and legislative proposals relating to such motor fuel tax collection procedures and exemptions.

The first part of the document is a summary. The second part is a description of present-law collection procedures and exemptions, and of the provisions of six Senate bills: (1) S. 2075 (introduced by Senators Daschle, Armstrong, Baucus, Boren, Danforth, Durenberger, Pryor, Roth, Riegle, and others); (2) S. 2003 (introduced by Senators Gramm, Durenberger, Wallop, Armstrong, and others); (3) S. 2062 (introduced by Senator Nickles and others); (4) S. 2067 (introduced by Senator Conrad and others); (5) S. 2118 (introduced by Senator Gramm); and (6) S. 2128 (introduced by Senators Warner, Chafee, Mitchell, and others).

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[1] This document may be cited as follows: Joint Committee on Taxation, Collection Procedures for Excise Taxes on Gasoline and Diesel and Nongasoline Aviation Fuels (S. 2075, S. 2003, S. 2062, S. 2067, S. 2118, and S. 2128) (JCX-3-88), March 15, 1988.

I. SUMMARY

Gasoline excise tax

The gasoline excise tax is imposed on removal of gasoline blend stocks from the refinery or from a bonded terminal to which the blend stocks are transferred in bulk. In general, all exemptions for specified uses of gasoline are realized by means of refunds following tax-paid sales.

Diesel and nongasoline aviation fuels excise taxes

Effective after March 31, 1988, the excise taxes on diesel fuel and nongasoline aviation fuels are imposed on the sale of the taxable fuel by a producer, defined to include wholesale distributors as well as actual producers of the fuels. Most exemptions from these taxes are realized by means of refunds following tax-paid sales. Special rules are provided allowing sales without payment of tax in the case of trains, commercial airlines, feedstock use, and use by States and local governments. These special rules require that purchasers register with the Internal Revenue Service and provide proof of financial responsibility.

Before April 1, 1988, these excise taxes are imposed on the retail sale of the taxable product and exemptions generally are realized by means of tax-free sales.

Overview of the bills

Gasoline excise tax

Certain of the bills would permit sales of gasoline without payment of tax where the gasoline was to be used on a farm for farming purposes. Additionally, under one bill, wholesale distributors would be permitted to remit the gasoline tax (instead of refiners or terminal operators as under present law).

Diesel and nongasoline aviation fuels excise taxes

The bills would restore the ability of some or all of the persons who under the law before April 1, 1988, may purchase diesel fuel without payment of tax for use in an exempt use to continue to do so, in some cases subject to registration and financial responsibility requirements.

II. PRESENT LAW AND PROPOSALS RELATING TO COLLECTION OF EXCISE TAXES ON GASOLINE, DIESEL, AND NONGASOLINE AVIATION FUELS

A. Present Law

1. Gasoline excise tax

Imposition of tax

An excise tax of 9.1 cents per gallon is imposed on removal from the refinery (customs custody for imported gasoline) or sale (if earlier) of gasoline, gasoline blend stocks, and products commonly used as additives in gasoline (Code sec. 4081). An exception is provided permitting bulk transfers of gasoline, gasoline blend stocks, or additives to registered and bonded terminals without payment of the tax. In such cases, terminal operators are liable for collection and payment of tax upon removal of the taxable fuel from the terminal. Revenues equivalent to this tax are deposited in the Highway Trust Fund (9 cents per gallon)[2] and the Leaking Underground Storage Tank Trust Fund (0.1 cent per gallon).[3]

Before January 1, 1988, the gasoline excise tax was imposed on the sale of gasoline by a "producer", which was defined to include wholesale distributors and other intermediaries (other than retailers) in the chain of gasoline distribution who registered with the Internal Revenue Service.

The current gasoline tax payment procedures were enacted by the Tax Reform Act of 1986, effective on and after January 1, 1988.

Gasoline mixed with alcohol ("gasohol")

Registered gasohol[4] blenders are permitted to purchase

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[2] The "Highway Trust Fund financing rate" is scheduled to expire after September 30, 1993.

[3] The "Leaking Underground Storage Tank Trust Fund financing rate" is scheduled to expire after the earlier of (1) December 31, 1991, or (2) the end of the month for which Treasury estimates that this Trust Fund's net tax revenues (net of refunds and credits) reach $500 million.

[4] "Gasohol" is any mixture of gasoline if at least 10 percent of the mixture is alcohol with a proof of 190 or more. Alcohol includes methanol and ethanol, but does not

(Footnote continued)

gasoline under present law at a 3.1 cents-per-gallon tax on the gasoline component of the mixture,[5] if blending occurs at the terminal. In all other cases, gasohol blenders (like other purchasers) must purchase gasoline and gasoline blend stocks tax-paid (at the full 9.1 cents per gallon). However, they may claim a refund of any tax paid on purchases to the extent that excess tax is paid.

A special, accelerated refund procedure is provided for gasohol blenders who buy gasoline tax-paid. Under this procedure, refund claims may be filed weekly, and if the Treasury Department has not paid a claim within 20 days of the date of filing, the claim is to be paid with interest from such date.

Registration and bond

Every person subject to the gasoline excise tax who receives non-tax-paid gasoline is required to register with the Treasury Department and may be required, under Treasury regulations, to post bond in such amount as the Secretary determines (sec. 4101).

Exemptions

Farmers.--If gasoline is used on a farm for farming purposes, farmers may claim an income tax credit for tax paid on the gasoline (sec. 6420).

State and local governments, nonprofit educational organizations, and buses.--State and local governments and nonprofit educational organizations must purchase gasoline tax-paid and apply for a full refund of the tax (sec. 6421(c)). If a refund of $1,000 or more of gasoline tax is due with respect to gasoline used during any of the first three quarters of the taxable year, a claim for refund may be filed for tax paid in that quarter. Otherwise, only one refund claim per taxable year may be filed. These refund procedures also apply with respect to gasoline purchased (tax-paid) for use in State and local buses, school buses, and intercity or local buses (sec. 6421(b)).

In general, only an exempt user may file a claim for refund; however, under a special procedure, sellers may, in certain cases file the claim on behalf of the exempt user

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[4](continued)
include alcohol produced from petroleum, natural gas, or coal.

[5] Gasohol is eligible for a 6-cents-per-gallon exemption from the 9-cents-per-gallon Highway Trust Fund financing tax rate.

(sec. 6416). Thus, in the case of sales to States and local governments, for use in vessels, and certain other uses, if a seller demonstrates that the exempt user is billed for a price "net of tax," the seller may claim the refund.

Exports and supplies for vessels.--Gasoline for export or for use as supplies for vessels is no longer tax-free when sold but is subject to the same refund or credit rules as for State and local governments, nonprofit educational organizations, and buses.

Other non-highway users.--Taxpayers other than governmental units or tax-exempt organizations who use gasoline in off-highway business uses also must purchase gasoline tax-paid and realize their exemptions by means of an income tax credit or refund. Generally, these users may only claim a credit on their income tax returns (secs. 34 and 6421(i)), unless they meet the $1,000 per quarter rule, described above, for refunds (sec. 6421(d)(2)).

2. Diesel and nongasoline aviation fuels excise taxes

Post-March 31, 1988

Effective after March 31, 1988, the excise taxes on diesel fuel and nongasoline aviation fuels ("jet fuel") will be imposed on the sale of those fuels by a producer, or use of the fuels if before payment of tax otherwise is made (sec. 4091). The term producer is defined to include wholesale distributors as well as refiners and certain other intermediate persons (other than retailers) in the chain of distribution of these fuels. All producers of taxable fuels must register with the Treasury Department and satisfy such bonding requirements as Treasury prescribes.

Exemptions from these taxes are provided for several specified uses. In the case of diesel fuel, exemptions are provided for, inter alia--

(1) Use exclusively by States and local governments;

(2) Use on a farm for farming purposes;

(3) Use by an educational organization exempt from income tax under Code section 501(c)(3);

(4) Use by certain aircraft museums; and

(5) Use other than as a fuel in a highway vehicle.

The tax on nongasoline aviation fuel applies only to such fuels used in noncommercial (general) aviation, defined as aircraft use other than the carrying of passengers or

freight for hire.

Effective on and after April 1, 1988, most exemptions from these taxes will be realized through refunds. Thus, tax generally will be imposed on all sales with the ultimate user of fuel used for an exempt purpose claiming a refund from the Treasury Department. These refunds may be claimed in either of two ways. First, a credit against the user's income tax is permitted (sec. 34). Second, a person entitled to a refund of $1,000 or more during any one of the first three calendar quarters of a year may file a claim for refund of tax paid during that quarter (sec. 6427). Third, States and nonprofit users may file claims for refund annually without regard to the amount of tax for which the claim is made (or quarterly subject to the $1,000 threshold).

The Treasury Department is authorized to establish procedures for permitting sales without payment of tax, on a case-by-case basis, for certain uses where the purchaser demonstrates to Treasury's satisfaction that the fuel will be used in a nontaxable use and also registers and satisfies such financial responsibility requirements as Treasury may require. Sales that are exempt from tax include only direct sales by a producer to an ultimate user for exempt use. These sales are permitted only in the case of (1) diesel fuel sold for use as fuel in a diesel-powered train; (2) aviation fuel sold for use as fuel in an aircraft in commercial aviation; (3) taxable fuels sold for industrial use other than as a motor fuel (i.e., as a chemical feedstock); and (4) taxable fuels sold for exclusive use of any State or local government. An additional exemption permits diesel fuel that Treasury determines is destined for use as heating oil to be sold without payment of tax.

These provisions were adopted as part of the Omnibus Budget Reconciliation Act of 1987.

Pre-April 1, 1988

Before April 1, 1988, the excise taxes on diesel fuel and nongasoline aviation fuels are imposed on the retail sale (or earlier taxable use) of these fuels. In general, exemptions from these taxes are realized through tax-free sales, rather than through refunds or credits.

B. Description of Bills

1. S. 2075 (Senators Daschle, Armstrong, Baucus, Boren, Danforth, Durenberger, Pryor, Roth, Riegle, and others)

S. 2075 would provide that the present-law direction to the Treasury Department to issue regulations allowing sales of diesel and nongasoline aviation fuels without payment of tax in certain cases is mandatory and that those regulations must be issued no later than 30 days after the date of the bill's enactment.

The bill further would permit sales of diesel fuel without payment of tax for use on farms for farming purposes subject to the same conditions as those under present law for States and local governments. Thus, bulk sales for this purpose made directly by producers to the farm users would be exempt when the purchaser had registered and satisfied Treasury financial responsibility standards.

Effective date

The bill would be effective for sales of taxable fuels occurring after March 31, 1988. A special refund procedure would be provided for any exempt users who paid tax on these fuels before the mandated Treasury regulations were issued.

2. S. 2003 (Senators Gramm, Armstrong, Durenberger, Wallop, and others)

S. 2003 would provide that sales of diesel fuel for use on a farm for farming purposes would be tax-free. These tax-free sales would be available without regard to any Treasury discretion or mandatory registration and financial responsibility requirements. In addition to direct sales to farm users, sales by wholesalers to retail dealers who resell the gasoline to State or local governments would be made without payment of tax.

Effective date

The bill would be effective for sales of taxable fuels occurring after March 31, 1988.

3. S. 2062 (Senator Nickles and others)

S. 2062 would direct the Treasury Department to adopt regulations permitting States and local governments to purchase gasoline without payment of tax. In addition to direct sales where these governments purchase fuel from the refinery or a pipeline terminal, sales to wholesale

distributors who resell the gasoline to States or local governments would be made without payment of tax.

Effective date

The bill would be effective upon enactment.

4. S. 2067 (Senator Conrad and others)

Sales of diesel fuel for farm use

S. 2067 would permit sales of diesel fuel without payment of tax for use on farms for farming purposes subject to the same conditions as those under present law for States and local governments, except sales to intermediate parties such as retail dealers for resale to farms also would be made without payment of tax.

Wholesale gasoline distributors

The bill would permit wholesale distributors to remit the excise tax on gasoline, subject to satisfaction by such dealers of such registration and financial responsibility requirements as the Treasury Department adopts. (The bill would not change the taxable event for the gasoline tax or the timing of payments of that tax.)

Wholesale distributor would be defined to mean any person who (1) sells gasoline to retailers or to users who purchase in bulk quantities and deliver into bulk storage tanks, or (2) purchases gasoline from a person who would pay the tax under present law, i.e., any producer or importer of gasoline, and distributes such gasoline to 10 or more retail gasoline stations under common management with such person.

Gasoline sales to farmers and gasohol blenders

The Treasury Department would be directed to permit sales of gasoline without payment of tax for use on a farm for farming purposes, both in the case of direct sales from the refinery or pipeline terminal to a farmer and in the case of sales to wholesale distributors who re-sell the gasoline for farm use. Persons purchasing gasoline without payment of tax would be required to register with Treasury and to satisfy such financial responsibility requirements as Treasury might require.

The partial exemption from the gasoline tax (9.1 cents per gallon) for gasoline used in producing a gasohol blend at the time of the sale or removal would be extended to apply to gasoline sold to produce a gasohol blend after the time of the sale or removal. The Secretary would be given authority to prescribe the terms and conditions necessary to carry out

this amendment.

Effective dates

The provisions of the bill generally would be effective upon enactment. The provision relating to diesel fuel sold for farming use would apply to sales occurring after March 31, 1988.

5. S. 2118 (Senator Gramm)

The Treasury Department would be directed to prescribe regulations under which no tax on diesel fuel would be imposed on sales for use by the purchaser in an off-highway use, or for resale by the purchaser to a second purchaser for use by the second purchaser in such a use.

The term off-highway use would be defined as any use not as a fuel in a diesel-powered highway vehicle or a diesel-powered train.

Effective date

The bill would be effective for sales occurring after March 31, 1988.

6. S. 2128 (Senators Warner, Chafee, Mitchell, and others)

S. 2128 would permit sales of diesel fuel without payment of tax for use in fishery vessels subject to the same conditions as those under present law for sales without payment of tax to States and local governments, except sales to other intermediate parties (e.g., retail dealers) who stated that the fuel ultimately would be used in a fishery vessel also would be made without payment of tax.

A fishery vessel would be defined as a fish harvesting vessel, a fish tender vessel, or a fish processing vessel.

Effective date

The bill would be effective for sales occurring after March 31, 1988.